1087. In this last case an injunction was denied to prevent the police from interfering with public billiard rooms kept open on Sunday notwithstanding that plaintiff had twice been arrested for the same offence and discharged on habeas corpus. It would seem that, if the validity of the act under which the officers were proceeding had not been determined, a court of equity could always look into the merits of the case, and at least grant a temporary injunction until the validity of the act had been determined. The court refused to consider the merits of the case in *Delaney* v. *Flood,* 183 N. Y. 323, 111 Am. St. Rep. 759, and in *Olympic Athletic Club* v. *Speer,* 29 Colo. 158, 67 Pac. 161; but where the interfering acts of the officers have been declared illegal, as in the principal case, apparently a court may properly interfere.

INSURANCE—"ACTUAL CASH VALUE AT THE TIME LOSS OCCURS."—Plaintiff's cotton stored in Brooklyn, N. Y., was burned in the fire of June 8, 1905, during which fire about one-third of the cotton in the port of New York was destroyed, but that of the plaintiff was not burned until some time after the fire started (the exact moment is not ascertained). During the progress of the fire the actual and threatened loss caused a rise in the price of the commodity. In an action on a fire insurance policy limiting the liability of the insurer to the "actual cash value of the property at the time the loss or damage occurs," the defendant contending that the price of the cotton at the time the fire started should be the measure of damages, *Held,* that the recovery should be at the enhanced value. *Liverpool, London, & Globe Ins. Co.* v. *McFadden,* (1909), — C. C. A., 3rd Cir. —, 170 Fed. 179.

The writer has been able to find no other statement of the law on the precise question as to what time is meant by the phrase, "the time the loss or damage occurs." This is probably because facts similar to those of this case are of rare occurrence. Although the insurer claimed that the peculiar facts made a decision for the insured unjust, it is believed that it may be justified on the well established theories that the fire insurance contract is one of indemnity, VANCE, LAW of INSURANCE, p. 52; *Imperial Fire Ins. Co.* v. *Coos Co.,* 151 U. S. 452; *Cross* v. *National Fire Ins. Co.,* 132 N. Y. 133; and that contracts of insurance shall be liberally construed in favor of the insured so as not to defeat his claim to *idemnity.* I COOLEY'S BRIEFS on the LAW OF INSURANCE, 636; *McMaster* v. *N. Y. Life Ins. Co.,* 183 U. S. 25. The insured merely obtained indemnity, for he would be forced to pay the increased price for cotton to replace that burned.

INSURANCE—EFFECT OF CONDITION AGAINST CHATTEL MORTGAGES—MORTGAGE ON PART OF GOODS ONLY.—A fire insurance policy on certain household goods provided that the policy should be entirely void if the subject of the insurance should become incumbered by a chattel mortgage. In an action on the policy, *held* that a chattel mortgage on part of the goods did not vitiate the policy. *Mecca Fire Insurance Co. of Waco* v. *Wilderspin,* (1909), — Tex. Civ. App. —, 118 S. W. 1131.

There is a conflict on the question as to whether a breach of condition as to part of the subject matter of the insurance contract will avoid the

whole policy. *Bills* v. *Hibernia Ins. Co.*, 87 Tex. 547; *Georgia Home Ins. Co.* v. *Brady*, (Tex. Civ. App.), 41 S. W. 513; and *Sullivan* v. *Mercantile Town Mut. Ins. Co.*, 20 Okl. 460, are cases sustaining such a policy. To the contrary are *Josnson* v. *Sun Fire Ins. Co.*, 3 Ga. App. 430; and *Aetna Insurance Co.* v. *Mount*, 90 Miss. 642. The principal case goes a step farther than the "*Bills Case*" cited above where the subject of the insurance consisted of separate classes of property separately valued, but it is the logical outcome of the doctrine there enunciated. Directly to the contrary, however, is *Vucci* v. *North British & Mercantile Ins. Co.*, 88 N. Y. Supp. 986. The court in the principal case may have been influenced by the fact that the value of the unincumbered portion of the goods insured exceeded the amount of the insurance on all the goods, for carrying this doctrine to its logical conclusion, it would seem that the insured might incumber the property to any extent provided that a moiety only should be free. The decision is strengthened by the now well established rule that the insurance contract will be so construed as to prevent a forfeiture if possible. I COOLEY'S BRIEFS ON THE LAW OF INSURANCE, p. 633; *Baley* v. *Homestead Fire Ins. Co.*, 80 N. Y. 21.

LIBEL—ACTIONABLE PUBLICATION—ADVERTISEMENT CONTAINING PORTRAIT AND FALSE ENDORSEMENT OF WHISKEY.—In an advertisement printed in defendant's newspaper, plaintiff's portrait was published with a statement thereunder purporting to have been made by one "Mrs. A. Schuman" endorsing a brand of whiskey, and calculated to convey the impression that plaintiff is a nurse, and had personally used this whiskey, and as a nurse had recommended its use as a tonic. In an action for libel the declaration alleged that plaintiff was not Mrs. Schuman, nor a nurse, that she was an abstainer from liquor and had neither used, nor recommended the use of, this whiskey. At the trial testimony in support of these allegations was excluded, and a verdict was directed for defendant. *Held* that plaintiff should have been permitted to prove her case and submit it to the jury. *Peck, Petitioner* v. *Tribune Company*, (1909), 214 U. S. 185.

The Circuit Court of Appeals, Seventh Circuit had affirmed the judgment of the trial court (*Peck* v. *Tribune Co.*, 154 Fed. 330), GROSSCUP, J., who delivered the opinion of the court, giving the following reasons: Since there was no averment of special damage the plaintiff must recover on the libel as such *per se*, if at all; that in his opinion the alleged matter is not libelous *per se*, as bringing the plaintiff into ill repute, public hatred, contempt or ridicule, inasmuch as there is no consensus of opinion that nursing as an occupation is discreditable nor is the use of a particular and favorite brand of whiskey as a tonic and recommending its use by others generally considered wrong. Mr. JUSTICE HOLMES says: "If a man sees fit to publish manifestly hurtful statements concerning an individual, without other justification than exists for an advertisement or piece of news, the usual principles of tort will make him liable, if the statements are false or are true only of someone else"; that an unprivileged falsehood need not entail universal hatred to constitute a cause of action, it being sufficient if the statement